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Security Information

CIA HISTORICAL REVIEW PROGRAM
RELEASE IN FULL

NIS 7

2003

NATIONAL INTELLIGENCE SURVEY

GUATEMALA

SECTION 54

PUBLIC ORDER AND SAFETY

CENTRAL INTELLIGENCE AGENCY
Washington, D. C.

CHAPTER V

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54. Public Order and Safety

A. General

The Guatemalan revolution of 1944, which overthrew the dictatorial regime of President Jorge Ubico (1931-44), ushered in a period of political, economic, and social change. A desire generally to liberalize the political system and to modernize the governmental structure caused the revolutionary regime to reform the police system and to enact into legislation modern penal and procedural codes and regulations. The police force, organized as the Civil Guard (*Guardia Civil*), was intended to bring to an end the much hated practices of the national police which had operated under the Ubico regime. The Civil Guard was expected to instill in the population a degree of confidence that had been generally lacking under the previous regimes. In contrast to Ubico's national police, which had served primarily as a political instrument to safeguard the interests of the dictatorship, the Civil Guard was organized as a nonpolitical and purely civil force. In compliance with Article 71 of the 1945 constitution, the Civil Guard was demilitarized and made completely independent of the armed forces command, which could assume jurisdiction over it only in times of manifest national calamity or threat of war. In 1949, legislation was enacted to abolish departmental and auxiliary guards, and to incorporate both these organizations into the Civil Guard. In addition, there are smaller national police organizations, independently maintained and administered, and some local municipal police.

The police force is considered adequate for Guatemala under ordinary circumstances for the protection of the people and the enforcement of laws, especially in the capital. A very rough estimate of coverage is one police official for every 800 persons in the country. For Guatemala City the ratio would be approximately 1 to 250. In times of serious crises and widespread disorders, the police alone could not control the nation. However, the army, comparatively strong, well-equipped, and loyal, appears capable of thwarting any revolutionary attempt and its existence has strengthened the position of the police.

The Civil Guard and the other police forces, insofar as is known, carefully observe the laws in criminal investigations and other routine matters. In the handling of political crimes, however, especially during the past two years, the police have

exceeded their legal authority. The Arbenz administration has increasingly turned the Civil Guard into a political weapon. Performing what is purportedly the neutral function of supervising elections, Civil Guards in the rural areas have reportedly instructed illiterates to vote for administration-supported candidates. The Civil Guard is also reported to have made improper arrests and to have used brutality in order to obtain confessions.

At various times since the late nineteenth century Guatemalans have endeavored to establish a modern criminal procedural and penal system. In 1898 a criminal procedural code was enacted guaranteeing the right of accused individuals to have a fair trial and establishing uniform court procedure for various types of cases. This code was followed by more humanitarian penal legislation. In 1945, after several dictatorial regimes had widely disregarded the provisions of such legislation, the revolutionary administration of Juan José Arévalo (1945-51) reaffirmed the principles of the 1898 code, amended it, and enacted a modern penal code.

The present penal code emphasizes crimes committed against the state and deals somewhat less severely with other violations of the law. Both the penal and procedural codes provide safeguards which in themselves appear adequate to protect citizens accused of violating the laws. These codes, in addition to the civil code, are designed to guarantee that those accused will receive fair hearings by relatively competent judges, that sentence for the same crime will not differ greatly in degree, and that those convicted will have ample opportunity to appeal decisions.

Although the manner of selecting judges and the fact that they serve only four-year terms make them vulnerable to political pressure, judges have, insofar as is known, faithfully upheld the laws in purely criminal cases. In political crimes, however, judges have perhaps been influenced by the administration. The recent dismissal of several Supreme Court Justices because of a decision rendered by the court with regard to the implementation of the Agrarian Reform Act suggests that courts may be subjected to greater official pressure than they have been accustomed to in the past few years. So far as criminal cases are

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concerned, such pressure would most likely be applied in political crimes.

Modern legislation enacted with respect to penal institutions has seldom been implemented. In general, prisons, particularly on the departmental and local levels, are antiquated and poorly administered. Although the codes and other regulations place emphasis on the rehabilitation of prisoners as one of the requisites of the prison system, little attention has been given to this matter. Recently, however, the reformatory system has been reorganized and courses begun there for the rehabilitation and education of the young inmates.

The maintenance of public order and the administration of the criminal code and of the penal system are complicated by the essentially bicultural system prevailing in Guatemala. More than half the population—a much higher percentage in many local political subdivisions (*municipios*)—is Indian in culture. In communities where there is a high proportion of Indians there is generally a bifurcation of political power, resulting in a dual system of government, Indian and *Ladino* (non-Indian).

Where such a system exists, Indians participate in varying degrees in the administration of justice. At times they act as mayors or as policemen, in the latter instance without pay. When they serve as officials, they tend to enforce the law in a lax manner and to hinder its due process if it affects another Indian. Although Indians often seek solutions in the courts in connection with their domestic quarrels and in disputes over land, in criminal matters they are collectively disposed to avoid the courts and are unusually apprehensive of police and political officials. In many instances Indian elders (*principales*) settle or try to settle disputes between Indians before they get to the *Ladino* civil magistrate. Crimes of violence among them are infrequent and usually appear to be committed under the influence of alcohol; stealing is rare, except for petty thievery. In the absence of comprehensive studies of Guatemalan Indians, only such information and generalizations as are given above can be presented in this Section. For further discussion of the Indians' attitudes and social organization, see CHAPTER IV, SECTION 42, under Cultural Characteristics.

On the whole, the problem of preserving law and order under normal circumstances is not serious in Guatemala. Although statistics on the incidence of crime and the number of people in prison are neither complete nor accurate, available information indicates that arrests and imprisonments are not excessive in ratio to the population. In addition, it appears that most arrests are for minor violations. The *Ladinos* as well as the Indians, however, tend to regard the police with sus-

picion, and to make every effort to avoid getting involved with the authorities. Toward the penal system the population is generally indifferent; the well to do have little to fear from it and are therefore unconcerned, and the poorer classes are powerless to effect changes even if they wish to do so.

B. Police system

The present police system of Guatemala is based primarily on the national police ordinances of 1925 (Decree No. 901), 1926 (Decree No. 1460), and 1940 (Decree No. 2445). After the revolution of 1944 several laws were passed which modified such legislation. These include the Act of 1944 changing the name of the national police to the Civil Guard (*Guardia Civil*), the act organizing departmental guards (1945), the law of Government and Administration of the Republic (1946), and the law of 1949 reorganizing the Civil Guard. Changes have also been made as a result of executive decision and practice, and a new organic law has been drawn up but so far has not been enacted. The new laws, in conjunction with Article 71 of the 1945 constitution, prohibit the police from being militarized except in cases of extreme emergency.

The police system is composed of one large national force, the Civil Guard, administered by the Ministry of Interior, and other smaller national police units, of which the Judicial Police (*Guardia Judicial*) and the Treasury Police (*Guardia de Hacienda*) are the most important. They are under the jurisdiction of the Ministries of Interior and Finance, respectively. The constitution of 1945 and subsequent legislation also provide that municipalities may organize their own local police forces.

Administrative control and disciplinary supervision of all national police organizations are concentrated in Guatemala City; high-ranking officials are presidential appointees, but they work through and are responsible to their respective ministries.

Operational control of the national police is decentralized. Although the directors of the various police organizations appoint their chief assistants in each department, the governor, a presidential appointee who is not subordinate to these directors, is invested with full authority over all police forces. By law, the departmental governor has primary responsibility for the maintenance of public order and safety, while his subordinates have corresponding authority within their jurisdiction. No conflict between the governors and national police directors over operational matters pertaining to the police has been reported.

1. Civil Guard

a. FUNCTIONS AND ORGANIZATION — The Civil Guard is responsible for the preservation of public order, the protection of life and property, and the enforcement of the laws of the Republic throughout the nation.

Although the Civil Guard operates under the jurisdiction of the Ministry of Interior and in the departments under the immediate direction of the governors, in certain matters affecting military establishments and national security, it is responsible to the Chief of the Armed Forces. The head of the Civil Guard, a presidential appointee, is always a military officer and bears the title of director general. His responsibility to the President is exercised through the Minister of Interior.

The administration of the Civil Guard is concentrated in Guatemala City. Various units of the Guard are concerned with such matters as identification, recruiting, communication, aliens, and penitentiaries. The primary function of the Department of Identification is to take and file photographs of criminals, and in 1951 it was officially stated that the department had substantially increased its activities in this field. The Department of Communication coordinates the radio-equipped vehicles of the Civil Guard and owns and administers a commercial radio station, the Voice of the Civil Guard (*La Voz de la Guardia Civil*). The Department of Foreign Control (aliens), in cooperation with the Immigration Department of the Ministry of Foreign Affairs, whose instructions it generally follows, is responsible for maintaining records on all foreigners entering the country and those who have become naturalized citizens.

Functionally, the Civil Guard is distributed throughout the 22 political departments. Some Civil Guard personnel are assigned to duty on a municipal level in the Departamento de Guatemala. Outside of the capital, most Civil Guard police are assigned on a departmental level, and these in turn are given duty at the various posts within the department. In addition, the Civil Guard has a Mounted Division operating in the rural areas whose primary task is to search out fugitives in unpopulated areas and to assist the Treasury Police (see below) in controlling contraband trade and illegal border crossings.

b. PERSONNEL — There are approximately 3,200 men in the Civil Guard. Of this number more than one-third are stationed in Guatemala City and the remainder are scattered throughout the nation. All officers are regular army personnel assigned to duty with the Civil Guard. There is reportedly no official relationship between the

police and the army nor is there evidence of animosity between the two services.

In general, the appearance, conduct, and efficiency of Civil Guard units stationed in Guatemala City are far superior to those of units elsewhere in the country. The civil guards serving traffic duty reportedly can read and write, but in general appear to be poorly educated. They seem to find it difficult to handle other than routine matters and it has been asserted that they display little or no initiative; for example, they will abandon a traffic jam rather than systematically unravel it. Enlisted personnel customarily serve outside their home areas, and salaries are low (generally 25 to 30 quetzales* per month).

c. TRAINING AND EQUIPMENT — The quality of training in the Civil Guard has varied considerably in the past few years. Schools for training have functioned at different times, but the quality of instruction depends upon the ability, energy, and integrity of the instructor. A new Civil Guard Training School was established in August 1952. It conducts two six-month terms each year in the capital, maintains night schools, and offers correspondence courses. About 40 pupils are expected to graduate from the regular school each term. The program of studies includes personal defense, mathematics, Spanish grammar, civil and penal law, constitutional law, arms, military courtesy, geography and history of Guatemala and Central America, fingerprint study, and criminology. The present head as well as the majority of the 12-man staff of the School studied at the Military Police School of the U.S. Army, Caribbean, Fort Gulick, Panama. At the present time, another group of Civil Guard members are receiving technical training as policemen at the same U.S. school.

Members of the Civil Guard are poorly equipped in comparison to army personnel. As of 1951, officers of the Civil Guard were armed with Colt .45 automatic pistols or revolvers; most policemen were issued .38 caliber revolvers, but about one-quarter of these were judged to be unsafe for use. There were about 10 rounds of .38 ammunition for each revolver. During an emergency, trusted police are armed with 7 mm. rifles. In normal times, some policemen carry only nightsticks. The Civil Guard wear grey "working uniforms" except for special occasions and Sundays, when they wear dark blue uniforms.

The Civil Guard possess an unknown number of radio patrol cars and motorcycles. As far as can be determined, these are used only in Guatemala City.

* 1 quetzal equals US\$1.00.

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2. Minor national police organizations

a. JUDICIAL POLICE — The Judicial Police, although operating under the jurisdiction of the Ministry of Interior, works independently of the Civil Guard. Except for the fact that the Judicial Guard has its own director and consists of about 175 members, little pertinent information is available on any aspect of this organization. The Judicial Guard is concerned with both criminal and political matters. It performs the functions of the plainclothes section of a city police department and acts as a national secret service. In addition, according to various official statements, one of the major functions of the Judicial Guard is to prevent delinquency both in the capital and the departments.

b. TREASURY POLICE — The Treasury Police, established by law in July 1945, is a special department of the Civil Guard but works under and is responsible to the Ministry of Finance. Information on its organization and activities is incomplete. The Treasury Police functions as a customs guard and is concerned principally with the prevention of smuggling. It is also charged with the prevention and detection of fraud against the government, and the gathering of evidence in such cases, and has responsibility for border control and control of the distribution of alcoholic beverages.

The organization of the Treasury Police is extremely loose. The Chief is appointed by the President; its other personnel is appointed by the Minister of Finance. At the departmental level, the governor exercises primary jurisdiction. The activities of the Treasury Police, insofar as they relate to arrest and pursuit, are under the coordinating control of the Chief of the Civil Guard in each department. In matters pertaining to audits and financial investigations, the Treasury Police reports directly to the Ministry of Finance, which orders such additional investigations under its own control as appear necessary.

Information on the quality and effectiveness of personnel is almost completely lacking. There are about 650 Treasury Police, including approximately 117 mounted guards, distributed through the various political departments. About one-fifth of the entire Treasury Police force is stationed in port cities and on the nation's frontiers. The 1951/52 Guatemalan budget indicates that Treasury Police receive the lowest salaries paid all police forces.

3. Local police organizations

Both Article 202 of the Constitution of 1945 and decree No. 226 on municipal government provide for the establishment of local police organizations. A local police force may be organized

only 1) when an individual community of at least 5,000 inhabitants petitions Congress and 2) after that body enacts specific legislation for its creation. Such local forces are to be wholly financed by the community, to be administered by the local alcalde (mayor), to conform to Civil Guard Regulations, and to be under the general supervision of the departmental governor. Although communities have been granted the right to establish local police forces, information as to their location and operation is fragmentary.

4. Evaluation

Information regarding the efficiency, effectiveness, and integrity of police forces in Guatemala is extremely limited and deals almost entirely with the Civil Guard. Although the *Memorias* issued by the Ministry of Interior indicate general satisfaction with the performance of the Civil Guard, even these reports note that it is not altogether effective or efficient; this view is also expressed by the independent press and by some important administration officials. The reasons given for this situation are numerous. Efficiency is limited by the lack of adequate numbers in the police forces; thus Guatemala City as well as rural areas are deprived of full police protection. The performance of the police has also been seriously affected by the poor training programs. Low salary scales and the fact that opportunity of advancement through the ranks is almost nonexistent, since only army officers are appointed as police officers, have made police positions unattractive. The custom of assigning men away from their home areas undoubtedly deters some from joining the police. Insufficient wages, even for the officers, lend plausibility to the charges that members of the Civil and Judicial Guards engage in corrupt practices. On various occasions demands have been made for the reorganization of the Civil Guard in order to increase its efficiency in combatting delinquency, which reportedly has increased considerably in the capital in recent years. Frequent declarations that the police system would be improved have been made, but thus far no important measures in this direction have been instituted.

The Civil Guard as presently constituted, however, is generally capable of preserving public order and safety although probably not in time of a revolution or a very serious natural calamity. Civil Guard personnel in recent months have been effective in controlling disturbances growing out of enforcement of the Agrarian Reform Law. However, they have failed in a number of instances to prevent the illegal seizure of land by farm laborers. On different occasions since 1944 the Civil Guard has cooperated with the army in maintaining order during times of crisis.

The Civil Guard, designed as a nonpolitical organization and so described in the first years after the 1944 revolution has in recent years been used increasingly as an instrument for carrying out the administration's leftist policy objectives. High-level appointments in the Civil Guard as well as in the other police forces appear to be made primarily on the basis of loyalty to the administration. Furthermore, officials of the Civil Guard frequently act in an arbitrary manner according to the administration's wishes instead of pursuing an independent course of action. For example, Civil Guard officers have arrested students and landowners for their vocal opposition to the Agrarian Reform Law. Moreover, a circular of February 1953 from the Director of the Civil Guard to the departmental chiefs instructed them to support the "proletarian masses" in disputes with people of "good social position" and suggested that they seek the advice of "wholly revolutionary" persons when in doubt. In the departments the governors have been accused of using the Guard to interfere in local elections and to further the aims of the administration.

The Civil Guard in the past two years has committed acts specifically forbidden by the constitution and the penal and criminal procedural codes. It has arrested anticommunist opponents of the government without proper warrants, and has illegally detained them, sometimes incommunicado. Charges have been made by political opponents of the present regime who have been detained that the police have employed brutality to obtain information and confessions from them. All these violations appear to have occurred in connection with political "crimes"; none has been reported in purely criminal cases.

Because of such practices as these, which perpetuate the memory of earlier arbitrary police methods, the attitude of the general public toward the police is one of distrust and suspicion. Whereas the ordinary citizen is apprehensive of almost any contact with police officials, the wealthier Guatemalan is generally contemptuous of their authority, because of their lower social status and venality.

C. Penal system

The penal system of Guatemala derives its structure from the Constitution of 1945, the Penal Code promulgated in 1945, the Code of Criminal Procedures of 1898, and other pertinent legislation.

1. The Penal Code

a. ORGANIZATION AND APPLICABILITY — The Penal Code of 1945, patterned after the Guatemalan Penal Code of 1889, is an extremely detailed document specifically prescribing the minimum and maximum penalties for almost every conceivable type of crime. The code is divided into three basic

sections: general provisions, felonies, and misdemeanors. Guatemalans committing a punishable act under the code outside of their country may be brought to trial at home if no trial was held where the crime occurred. In addition, Guatemalans and foreigners residing abroad are subject to the code if they commit offenses against the security of Guatemala.

Some special groups, under certain conditions, are exempt from the provisions of the code. For example, military personnel on active duty are subject to the military code. However, nonmilitary offenses committed by military personnel are judged in accordance with the Penal Code. When a case before the Supreme Court of Justice involves military personnel, two military officers are temporarily appointed to that body to help review the case and render a verdict.

b. CRIMES AND PENALTIES

(1) *General provisions* — Crimes are divided into two broad categories, felonies and misdemeanors. Greater emphasis is placed upon felonies committed against the state and constituted authority than upon those committed against private individuals. Penalties for the various crimes include execution by a firing squad, confinement, and fines. The death penalty, seldom imposed, can be given only to adult males. Confinement may be in the national penitentiary, in departmental or local prisons, or in reformatories.

Individuals convicted of certain major crimes may receive a maximum sentence of 20 years in the national penitentiary. The law requires that all male prisoners convicted of major crimes be employed on public projects outside the prison, provided that they are physically able. Those serving sentences for assassination, parricide, robbery, and other serious crimes, and all second offenders may be employed in improving port and coastal works.

Criminals receiving prison sentences for major crimes may receive an additional sentence during the second half of their term if they are guilty of bad conduct. This sentence may not exceed one-quarter of the time left to serve. However, no prisoner can serve more than 30 consecutive years in prison. The code also provides that criminals over 60 years old and those who are ill must be placed in special institutions.

Individuals committing crimes of a less serious nature, most of which are classified as misdemeanors, may receive sentences ranging from fines to a maximum of one year's imprisonment. When criminals receive the maximum penalty of one year, they are generally confined in a departmental prison to work on projects deemed beneficial to the public welfare. Individuals convicted of a crime

for which the maximum sentence is six months usually serve their imprisonment at the local jail and work at tasks assigned by the authorities. The maximum sentence for most misdemeanors is one month. Prisoners serving such sentences are generally confined at the local jail and are required to engage in work necessary for the administration of the prison. If practicable, the work assigned to them is that of their own occupations. When fines are levied, they may not exceed one month's income, emolument, or salary of the convicted persons. If an individual is destitute and cannot pay the fine, imprisonment may not exceed one year.

The Penal Code and the Constitution of 1945 stipulate subsidiary penalties that automatically accompany the imposition of sentence. Article 14 of the constitution provides that the suspension of citizenship should accompany "a prison sentence issued in the case of an offense to which correctional imprisonment applies and which is not bailable under bond, excepting political offenses." Political and employment rights of persons convicted of misdemeanors are suspended during imprisonment. Citizenship rights of most prisoners are restored when their sentence is completed, when they are pardoned because of their rehabilitation, or when their freedom is gained through presidential amnesty.

In imposing sentence the court may take into account extenuating circumstances. Individuals committing crimes not covered by the code must be set free. Minors less than 15 years of age automatically have their sentences reduced. Women may not receive the maximum penalty in certain types of crimes, such as murder. The fact that a murder is committed as an act of vindication against an assassin of one's close relative is considered an extenuating circumstance. An act resulting in more serious consequences than anticipated, or a crime committed in a rage, or under the influence of an obsession may incur a reduced sentence. In addition, persons presenting themselves to the authorities before being pursued and those confessing voluntarily may receive reduced terms of imprisonment.

The code stipulates various methods by which sentences may be commuted in part or in whole. Commutation by presidential amnesty is established by both the code and the constitution and has been decreed on numerous occasions. The courts have the authority to reduce first offenders' sentences by two-thirds if the punishment does not exceed five years' imprisonment. A person serving a term for one year or more may be pardoned, in most instances for good conduct, upon the completion of three-quarters of his sentence. The Supreme Court of Justice has the power to reduce sentences of some serious crimes by one-half if the

head of the prison petitions in favor of such reduction, testifying to his observance of the prisoner's good conduct and to evidence of his rehabilitation. Commutations of this type cannot apply to second offenders or to those convicted of treason, parricide, assassination, robbery, or any other crimes committed against the public welfare. Paroled criminals must reside in a place specified by the court and are subject to police surveillance. They are not permitted to move without prior court approval. If parole is broken in any manner, the individual is returned to prison.

(2) *Felonies* — Felonies include crimes which endanger the security or tranquillity of the state, the intervention of military men or clergymen in politics or in matters related to the organization of labor, and serious crimes, such as homicide, kidnapping, rape, and arson. The penal code deals severely with offenses against the security of the state. Laws defining treason—for which the maximum penalty is death—apply to both Guatemalans and foreigners. Such acts as collaborating with a foreign power to declare war on Guatemala, helping the enemy to enter Guatemalan territory, attempting to incite troops to revolt, publishing secret documents, and spying fall within this category. Sentences for crimes which endanger the peace or independence of the state vary from one to eight years. For crimes of piracy, the sentence is 10 years of correctional imprisonment, and in certain cases, such as the burning of a ship, the death penalty is specified.

Punishment for other types of crimes which threaten the security of the state depends upon the seriousness of the act. Rebellion, sedition, and offenses against social institutions are punishable by death.

Publication of news items that disturb the peace and tranquillity of the nation or cause price fluctuations are considered crimes against public order and the sovereignty of the nation. This type of crime was established by Law 666 of September 1949 as an amendment to the penal code. The authors of the law maintain that it does not violate Article 36 of the constitution, which guarantees freedom of the press. It is this decree also that establishes as a crime intervention in politics or labor organizations by military personnel or clergymen. Punishment is one year of correctional imprisonment.

Penalties for felonies not directly concerning the security or peace and tranquillity of the state vary from one year of imprisonment to death. The death penalty is specified in homicide and for a robbery when a killing occurs, but a lesser penalty is normally imposed because of extenuating circumstances. For crimes such as robbery, the

sentence varies from 8 to 20 years, for kidnapping from 10 to 12 years, for counterfeiting from 3 to 6 years, for falsifying public documents from 3 to 6 years, and for arson from 2 to 10 years. The crime of infanticide, which by definition applies only when the infant is three days old or less, carries a penalty of 4 years if committed by the mother and 6 years if by the maternal grandparents. Presumably this law is intended to apply to the killing of illegitimate children, since only the above-mentioned relatives are specified. Individuals convicted of performing an abortion receive sentence of 5 to 6 years; the woman permitting it is imprisoned for one year. The penalty for illegal marriage (a religious ceremony unaccompanied by a civil ceremony) is one year; this provision of the law is designed to enforce the requirement for a civil marriage. Sentence for rape is 5 to 10 years. Transmitting a venereal disease, if done knowingly, is punishable by one to three years' imprisonment; if done unknowingly, by only two months.

(3) *Misdemeanors* — Misdemeanors include offenses against public order, the public interest, and individuals. Penalties for such offenses are usually less than a month of imprisonment or fines. Examples of misdemeanors are participating in unauthorized demonstrations, possessing firearms without a proper license, gambling, refusing to obey sanitary laws, participating in domestic fights, and committing traffic violations and petty thievery.

2. Incidence of crime

Reliable information, especially statistics, on the incidence of crime is almost completely lacking. The principal crimes in the urban areas are homicide, robbery, burglary, and petty thievery; those in rural areas are homicide and petty thievery. In recent months the crime rate in the rural areas has increased as a result of dissatisfaction over the operation of the Agrarian Reform Law. Such crimes have consisted primarily of murders, brawls, and machete fights. Crime is committed mostly by the lower and poorer classes of the population, who for generations have lived in squalor.

The *Memorias* issued by the Ministry of Interior give some information on the number of people arrested for the past few years, but do not detail the type of crime. In 1948 the Civil Guard arrested 55,171 persons. In 1949, 50,383 persons were arrested by the Civil Guard for all types of crimes, and an additional 1,484 were apprehended by other police for fraud and contraband. Of those arrested for traffic violations 13,404 were convicted of misdemeanors and 421 of felonies. In 1951, 28,201 persons were arrested for infractions of traffic laws.

3. Criminal procedure

The basis of criminal procedure is the Guatemalan Code of Criminal Procedure of 1898 with its numerous amendments. The code is derived largely from the Spanish Law of Criminal Procedure of September 14, 1882.

a. ORGANIZATION OF COURTS — Practically all criminal cases are handled by inferior courts which are divided into two levels, the municipal courts and the national Courts of First Instance. Municipal courts presided over by Justices of the Peace (*Jueces de Paz*) or Municipal Intendant (*Intendentes Municipales*) try cases for which the penalty cannot exceed six months and for which no written sentence is required. Courts of the First Instance have unlimited jurisdiction in criminal matters and try all cases for which the sentence would be one year or more of imprisonment or which require a written verdict. These courts also have appellate jurisdiction in cases tried by the municipal courts.

The superior courts composed of the Courts of Appeal and the Supreme Court of Justice, except in certain extraordinary cases, have only appellate jurisdiction in criminal cases. The Appeals Courts have appellate jurisdiction over the Courts of the First Instance. In special cases, such as charges of fraud against government officials, the Appeals Courts act as trial courts. The Supreme Court of Justice functions as the final appeals court in criminal cases.

b. ARREST AND ARRAIGNMENT PROCEDURES — The Constitution of 1945 and the code of criminal procedure carefully detail arrest and arraignment procedures. Article 43 of the constitution states that

... no one may be detained or imprisoned except by reason of offense and judicial restraint, and by means of a written order by a competent authority issued in accordance with the law, except when a fugitive criminal or one *in flagrante delicto* is involved.

The home is considered inviolable, and arrest within it after 6 p.m. and prior to 6 a.m. is explicitly forbidden in the constitution except under unusual circumstances to be specified by law.

Detained persons must be placed without delay at the disposal of a judicial authority and in centers of provisional detention. Individuals detained for simple offenses or violations of police regulations who can identify themselves either by documents, testimony of known persons, or other creditable means cannot be held. In any case, the authorities must be certain that the accused will appear before a competent judge within 24 working hours. Imprisonment for debt is forbidden except

when it involves refusal to support immediate relatives.

An individual may not be held incommunicado for more than 48 hours and must be interrogated within that period. During the time of detention, he must be informed of the reason for detention and the name of the accuser, and provided with all other pertinent information. As soon as this is done, the accused can no longer be held incommunicado and must immediately be allowed counsel.

Detention may not exceed five days; within that time a sentence of imprisonment must be issued or the detained person must be freed. Such sentences cannot be pronounced unless summary information is provided that a crime has been committed, and that according to the law a sufficient motive existed to give credibility to the charge that the detained person is guilty. In the citation issued by any authority, the reason for requiring the appearance of the accused at court must be indicated. Bail may be set only for a person whose alleged crimes entail penalties of one year or less.

As in most Latin American countries, the most important phase of the criminal procedure is the "investigation" (a summary trial). All proceedings in this "investigation," which is held in private, are concentrated in the hands of the judge. He gathers the necessary information and then orders the case to public trial if the evidence obtained warrants such action. Actually the guilt or innocence of the individual is usually established during the "investigation," which sometimes extends over a period of months.

c. TRIALS — Trials in Guatemalan courts are essentially perfunctory, since generally the guilt of the individual has been established during the "investigation." The judge publicly hears again the pertinent information. The defense also has an opportunity to present its case again. The judge then renders a decision.

Sentences may be either verbal or written. They may be verbal only if the criminal agrees to the sentence or if the case involves a misdemeanor. Local judges render only verbal decisions; if they believe that the verdict should be written, the case is referred to a judge of a Court of First Instance, who must decide after examining the evidence whether the decision should be written. Judges of such courts may hand down a verbal sentence only if that sentence does not exceed six months.

Trial by jury does not exist in Guatemala except in cases involving freedom of expression, as set forth in Article 36 of the constitution.

d. APPEAL — The code of criminal procedure grants the right of appeal to the accused or his representatives, to the state if it is a party to the

case, and, unlike U.S. law, to the "accuser." According to the code, all sentences are subject to appeal. Appeals may be presented orally or in writing and must be submitted to the tribunal in which the case was tried within three days after the issuance of the original verdict. All appeals are generally handled by the next higher tribunal. In considering an appeal the higher tribunal may revoke, amend, or annul the decision involved in the original verdict or remand the case to the lower court.

A special type of appeal known as cassation, which involves not substantive but procedural matters in the presentation and hearing of a case, may be made to the Supreme Court of Justice. This procedure may be invoked in two general categories of cases: those involving error in the application or interpretation of the law, and those involving error in the consideration of the evidence. The cassation procedure must be invoked within 10 days after the sentence.

The code also provides for the review of cases already closed. Review of such a case may be invoked if the evidence upon which the case was decided is found to be false or if two or more persons receive different sentences for a crime which was committed by only one of them. A case may also be reviewed in this manner if it is found that the author of a crime is other than the person condemned. Review may be instituted by the accused or by any member of the accused's immediate family or by the prosecutors of the Court of Appeal. All such cases are heard by the Supreme Court of Justice.

4. Penal system

a. PRISONS — Jails and prisons, both national and local, fall within the jurisdiction of the Ministry of Interior. Except for this fact no information is available on the supervision and administration of penal institutions.

The main prisons in Guatemala are located in the capital, where the Ministry of Interior operates the Central Prison for men and a smaller prison for women. All criminals in the country serving more than a one-year sentence are sent to one of these prisons. In Quezaltenango, there is a departmental penitentiary and a prison for women. Guards for the prisons are provided by the Guatemalan Army. There are small lockups in each town or village. In addition, there is a larger jail for men in El Petén and similar ones for men and for women (segregated by sex) in Alta Verapaz, Escuintla, Huehuetenango, Izabal, Jalapa, Jutiapa, El Quiché, Retalhuleu, Sacatepéquez, San Marcos, Santa Rosa, Sololá, Suchitepéquez, Totonicapán, and Zacapa. It is estimated that the total

number of prisoners in Guatemala averages between 4,000 and 5,000.

The budget for prisons for the fiscal year 1951/52 contemplated the following expenditures in quetzales:

DEPARTAMENTO DE GUATEMALA	
Salaries of administrative and other personnel and guards	74,520
Other expenses	200,000
REMAINDER OF THE COUNTRY	
Salaries, etc.	21,852
Other expenses	158,000
Total	454,372

The only penitentiary about which any information is available is the Central Prison of Guatemala City. This prison has eight workshops: carpentry, iron works, wicker, tailor shop, saddlery, clothmaking, shoemaking, and manual labor (unskilled). In the budget for the fiscal year 1951/52 it was estimated that income from these shops would amount to 25,609 quetzales and that the cost of materials and operations would be 20,000 quetzales. The Central Prison also has a hospital where, in 1951, 2,133 patients were treated.

b. REFORMATORIES — In early 1953, reformatories were transferred from the Ministry of Interior to the Ministry of Education. There are only two reformatories in the country, one for boys and one for girls, both located in Guatemala City. They provide instruction in such trades as shoe repairing, carpentry, sewing, and basketweaving.

5. Evaluation

Relatively little information is available regarding observance of the penal and criminal procedural codes and the manner in which the judges adhere to the letter as well as to the spirit of the law. However, legal procedures are frequently excessively slow; months and sometimes years are required in order to bring common criminals to justice. Otherwise the codes are generally followed except in political arrests; in such instances it has been the police (see above, under Police system) and not the courts that have been guilty of violating the prescribed laws.

Although the codes and subsequent legislation enacted by the Congress concerning prisons and reformatories contain modern and idealistic concepts of prison reform and rehabilitation, the Ministry of Interior's own *Memorias* clearly indicate that prisons, especially outside of the capital, are in a very poor state. The Ministry's 1951 report revealed a lack of sufficient funds to administer the prisons. In addition, the absence of appropriate prisons in local communities has frequently necessitated the renting of houses to be used as

prisons. A modern prison which was begun in 1950 at Puerto Barrios has not yet been completed.

Prisons are notoriously lacking in facilities, and little attention is paid to the welfare and comfort of the prisoners. Outside of Guatemala City, medical attention is almost nonexistent. Food is very poor, both in quantity and quality, consisting primarily of black beans and *tortillas*. Twice a week prisoners are permitted visitors, who very often bring food and other necessities with them.

On the whole the penal institutions are poorly administered. Treatment of inmates seems to be harsh and unconcerned with the welfare of prisoners. Prison guards generally manage to prevent the escape of prisoners, but they and other personnel, who are poorly paid even in the larger institutions, leave much to be desired in the performance of other duties.

Conditions within the reformatories are reported to have improved greatly since they were put under the jurisdiction of the Ministry of Education. Efforts are now being undertaken to rehabilitate the inmates, but it is still too early to gauge the result of this endeavor.

The public attitude toward the penal and reform system is one of apathy. In general, the well to do, displaying no interest in improving social and welfare institutions, raise no protest when the government reduces or diverts funds allotted for the penal system. Their attitude is illustrated by the fact that no penal reform organization exists in Guatemala. The lower classes, whose members comprise the majority of the inmates either are generally apathetic about such conditions or feel that they are the victims of a system over which they have no control.

D. Comments on principal sources

1. Evaluation

The material available for the preparation of this Section was not uniform in quality, but the data used were considered reliable. Information was drawn primarily from U.S. Embassy reports, official Guatemalan publications, and Guatemalan newspapers.

Many gaps exist in the data. Laws and regulations concerning the police and penal system were for the most part available, but little material exists on the functioning of certain elements of the police organization, the manner in which the courts operate, and the actual conditions within the prisons. There also was insufficient information on the attitude of the population as a whole toward law-enforcement agencies and observance of laws. The lack of such information is in part due to the Guatemalan Government's failure to publish statistics and other pertinent data

on these subjects. For example, it is generally from the complete *Memorias* that the bulk of information on the police and the penal system is obtained, and since 1944 only syntheses of official *Memorias* have been published. Because of the nature of the material, U.S. Embassy reporting on these matters is usually limited.

Furthermore, information is extremely meager on the special circumstances prevailing with respect to the application of the police and penal system to the Indians, particularly in areas where they predominate. Even the limited generalizations that have been made in this Section must be regarded as somewhat tentative because of the lack of adequate detailed information, the generally wide variations in customs from one Indian group to another, and the changing conditions in Guatemala, especially in recent years.

2. List of sources

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